

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:08CV30**

INTEGON NATIONAL INSURANCE)
COMPANY)
)
Plaintiff,)
)
v.)
)
LESTER BERRY; MICHAEL O.)
LEAVITT, Secretary of the United States)
Department of Health and Human)
Services; and CAROLINA)
ORTHOPEDIC SPECIALISTS,)
)
Defendants.)
_____)

CONSENT ORDER

This matter is before the court on the Joint Motion for Dismissal and Disbursement of Funds filed on October 24, 2008 (Document #11) by Integon National Insurance Company (“Integon”), the United States Department of Health and Human Services Centers for Medicare and Medicaid Services (“DHHS”), and Lester Berry (“Berry”). This matter is now ripe for disposition.

THE COURT MAKES THE FOLLOWING FINDINGS:

1. Integon is a disinterested stakeholder who has brought this interpleader case seeking protection from litigation relating to an automobile insurance policy that it issued for David Allen Wall (the “Policy”);
2. On or about September 16, 2000, Berry was injured in an automobile accident involving a car owned by Wall. On April 2, 2008, Integon filed this action seeking to interplead

the Policy limit of \$30,000 of insurance funds (the "Policy Funds"), which were subsequently paid into the registry of the North Carolina Superior Court for Catawba County as satisfaction of the claims arising out of this accident. The case was removed to this Court on April 23, 2008, but the Policy Funds remain with the state court.

3. Medicare made payments in the amount of \$23,799.76 on behalf of Berry for medical items and services related to his claims arising from the accident on September 16, 2000.

Pursuant to the Medicare Secondary Payer statute, 42 U.S.C. § 1395y(2)(b), and Integon's agreement to tender the abovementioned Policy Funds in satisfaction of the claims arising out of the accident, DHHS is nominally entitled to reimbursement for its abovementioned Medicare payments made on behalf of Berry.

4. However, Integon, DHHS, and Berry have now reached a compromise agreement whereby DHHS will receive \$12,000.00 as full and final satisfaction of its claim for reimbursement under the Medicare Secondary Payer statute. This amount shall be paid from the abovementioned Policy Funds. The remaining Policy Funds, consisting of the entire balance of funds held in the said registry after payment of the said sum of \$12,000.00, shall be disbursed to Berry.

5. Integon, DHHS, and Berry consent to the terms of this order. Carolina Orthopedic Specialists has informed Integon's counsel that it did not have any claim to the Policy Funds and that it would not be entering an appearance in the matter. Carolina Orthopedic Specialists has not filed a response to either the state court or removed actions.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. The clerk of Superior Court of the General Court of Justice for Catawba County,

North Carolina shall distribute the Policy Funds as follows: to DHHS, the sum of \$12,000.00 as full and final satisfaction of its claim for reimbursement under the Medicare Secondary Payer statute, 42 U.S.C. § 1395y(2)(b); to Berry, the remaining Policy Funds, consisting of the entire balance of funds held in said registry, including accruals or interest, if any, after payment of the said sum of \$12,000.00 to DHHS.

2. In return for the distribution of the Policy Funds as set forth above, Berry is hereby enjoined and restrained from instituting or prosecuting any proceeding or claim arising out of the instant lawsuit, including administrative and judicial appeals, in connection with the Medicare conditional payments made on his behalf arising out of the September 16, 2000 accident.

3. In return for the distribution of the Policy Funds as set forth above, Berry and DHHS are hereby permanently enjoined and restrained from instituting or prosecuting any other proceeding against Integon involving the Policy Funds payable under the Policy as a result of the September 16, 2000 accident.

4. This action is hereby dismissed, each party to bear its own costs.

Signed: January 20, 2009

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

